

RESOLUTION NO. 2023-182

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA, AUTHORIZING AND DIRECTING THE CITY ATTORNEY, ON BEHALF OF THE CITY, TO ENGAGE THE SERVICES OF OUTSIDE COUNSEL TO FILE A LAWSUIT AGAINST VARIOUS ENTITIES THAT MANUFACTURE PRODUCTS CONTAINING PFAS, AND TO JOIN THE PENDING MULTIDISTRICT LITIGATION KNOWN AS “IN RE: AQUEOUS FILM-FORMING FOAM PRODUCTS LIABILITY LITIGATION,” FILED IN THE UNITED STATES DISTRICT COURT, FOR THE DISTRICT OF SOUTH CAROLINA, CHARLESTON DIVISION, IN ORDER TO PRESERVE THE CITY’S RIGHTS AND REMEDIES THEREUNDER; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, *In Re: Aqueous Film-Forming Foam Products Liability Litigation, MDL Case No. 2873*, is filed as a nationwide multidistrict litigation in connection with affirmative claims relating to aqueous film-forming foam (“AFF”), perfluorooctanoic acid (“PFOA”), perfluorooctane sulfonate (“PFOS”), and any other related chemicals (collectively, “PFAS”), seeking redress for the harm caused by alleged deceptive and fraudulent marketing practices of several manufacturers of products containing PFAS; and

WHEREAS, the litigation has resulted in two (2) proposed class settlements, related solely to drinking water system claims, against Defendant 3M Company (“3M”) and Defendant E.I. DuPont de Nemours and Company and affiliates (collectively, “DuPont”). The deadline for the decision to participate in, or opt out of, the two (2) current settlements for drinking water systems is expected to be in, or around, December 2023; and

WHEREAS, Broward County has retained the services of Levin, Papantonio, Rafferty, Proctor, Buchanan, O’Brien, Barr & Mougey, P.A.; Douglas & London, P.C.; Taft, Stettinius & Hollister, LLP; SL Environmental Law Group, P.C.; and the Law Office of Kevin Madonna, PLLS (collectively, the “Levin Group”) to file litigation on behalf of Broward County, including Water and Wastewater Services, the Fort Lauderdale-Hollywood International Airport, and Port Everglades, in connection with damages

suffered by the County relating to PFAS against entities that manufactured products containing PFAS, or components thereof; and

WHEREAS, the Levin Group has offered to represent the City on a contingency fee and cost basis, wherein it will advance all fees and expenses necessary to litigate the case; and

WHEREAS, if the case should settle at any time up to and including the litigation of a Motion for Summary Judgment, the City will pay the Levin Group twenty-five percent (25%) of any recovery, plus reimbursement of costs and expenses; and

WHEREAS, the City Commission believes it is in the best interest of the residents of the City to pursue its legal remedies by engaging the services of outside counsel to file a lawsuit against various entities that manufacture products containing PFAS and to join the nationwide multidistrict litigation *In Re: Aqueous Film-Forming Foam Products Liability Litigation, MDL Case No. 2873*, to vindicate the rights of the residents of Coconut Creek; and

WHEREAS, the City Attorney recommends that the City engage the services of the Levin Group to represent the City because the Levin Group is representing Broward County and the City's water is provided by Broward County pursuant to a Large User Agreement dated May 23, 1989, First Amendment dated March 7, 2000, Second Amendment dated November 9, 2009, and Third Amendment dated April 4, 2017. Therefore, selecting the Levin Group will provide for consistency and avoid duplication of efforts.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA:

Section 1: That the foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this resolution.

Section 2: That the City Commission hereby authorizes and directs the City Attorney, or her designee, to engage the services of outside counsel to file a lawsuit

against various entities that manufacture products containing PFAS and to join the pending multidistrict litigation *In Re: Aqueous Film-Forming Foam Products Liability Litigation*, MDL Case No. 2873, and naming the City, as plaintiffs, in such lawsuit seeking the appropriate relief for the alleged deceptive and fraudulent marketing practices of several pharmaceutical manufacturers and the alleged failure to report suspicious purchases by certain wholesalers.

Section 3: That the City Manager, or designee, is authorized to execute legal representation agreement(s) and any other necessary documents pertaining to the litigation, subject to review and approval by the City Attorney, to effectuate the intent of this resolution.

Section 4: That if any clause, section, other part or application of this resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or in application, it shall not affect the validity of the remaining portion or applications of this resolution.

Section 5: That this resolution shall be in full force and effect immediately upon its adoption.

Adopted this _____ day of _____, 2023.

Joshua Rydell, Mayor

Attest:

Joseph J. Kavanagh, City Clerk

Rydell _____
Welch _____
Railey _____
Brodie _____
Wasserman _____